BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DC 20551

February 7, 2020

The Honorable Barry Loudermilk
House of Representatives
Washington, D.C. 20515

Dear Congressman:

Thank you for your letter dated November 21, 2019, discussing recent opinions issued by the Government Accountability Office (GAO) regarding the applicability of the Congressional Review Act (CRA) to three Supervision and Regulation (SR) Letters issued by the Federal Reserve Board (Board): SR 11-7—Supervisory Guidance on Model Risk Management, SR 12-17—Consolidated Supervision Framework for Large Financial Institutions, and SR 14-8—Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies.

In your letter, you asked the Board to confirm that it does not consider SR 11-7, SR 12-17, or SR 14-8 to be regulations or to be otherwise in effect. We confirm that each of the SR letters is unenforceable supervisory guidance, rather than a binding regulation. As the Board and other agencies clarified in their September 2018 Interagency Statement Clarifying the Role of Supervisory Guidance (Statement on Guidance),[1] supervisory guidance does not have the force and effect of law but rather articulates views regarding appropriate practices for a given subject area and provides insight in a transparent way that helps to ensure consistency in the supervisory approach. We would like to reiterate that we do not consider any supervisory guidance to be binding on supervised institutions or to have a legal effect, regardless of whether a particular guidance document has been the subject of a GAO opinion relating to the CRA.

As discussed in the Statement on Guidance, examiners will not criticize a supervised financial institution for a "violation" of (i.e., noncompliance with) supervisory guidance. Thus, the Board has advised our examiners not to issue matters requiring attention (MRAs), matters requiring immediate attention (MRIAs), or other supervisory criticisms on the basis of "violations" of SR letters, including, but not limited to, the SR letters that have been the subject of GAO opinions. The Board is reviewing outstanding MRAs and MRIAs to identify instances where SR letters may have been cited by examiners in a manner that is inconsistent with the Statement on Guidance, and will appropriately address any such inconsistencies. We have taken steps to ensure that when

[1] See SR 18-5: Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 12, 2018), at https://www.federalreserve.gov/supervisionreg/srletters/sr1805.htm, was jointly issued by the Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau.

examiners refer to SR letters or other supervisory guidance in communications to supervised institutions, they do so in an appropriate manner.

Your letter also raises concerns regarding whether the SR letters reviewed by the GAO should have been promulgated through notice-and-comment rulemaking procedures in light of the fact that the GAO determined that each of SR 11-7, SR 12-17, and SR 14-8 meets the definition of "rule" under the Administrative Procedure Act (APA). The GAO's opinions concern only the application of the CRA and not the legal status of guidance under the APA. While legislative rules must generally be issued through notice-and-comment rulemaking procedures under the APA, SR letters are not legislative rules. Rather, SR letters generally are issued pursuant to an APA exception from notice-and-comment rulemaking procedures for interpretive rules, general statements of policy, or rules of agency organization, procedure or practice.[2] In consultation with the other federal banking agencies, we are continuing to assess the scope of supervisory guidance documents that the Board should send to Congress under the CRA.

Further, your letter raises specific concerns regarding whether certain heightened regulatory or supervisory requirements set out in SR letters have been inappropriately applied to institutions supervised by the Large Institution Supervision Coordinating Committee (LISCC). Please note that the Board has issued the key standards applicable to LISCC firms as legislative rules following public notice and comment. This includes the capital planning rule (12 CFR § 225.8), the liquidity coverage ratio rule (12 CFR part 249), the resolution plans rule (12 CFR part 243), the GSIB surcharge rule (12 CFR part 217, subpart H), the enhanced supplementary leverage ratio rule (12 CFR part 217, subpart B), the total loss-absorbing capacity rule (12 CFR part 252, subpart G), and the enhanced prudential standards rules (12 CFR part 252).

The Board is currently evaluating its process for classifying institutions for supervision by LISCC. It is important that all the Federal Reserve's supervisory portfolios have a clear and transparent definition and we are considering measures to effect that.

Thank you for sharing your concerns on this important matter.

Sincerely,

Jerome H. Powell
Chair
Board of Governors of the
Federal Reserve System

Randal K. Quarles
Vice Chair for Supervision
Board of Governors of the
Federal Reserve System

[2] 5 U.S.C. § 553(b)(3)(A).